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October 30, 2020

By ECF

Honorable Paul A. Crotty
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

11/2/2020

The Government and U.S. Marshals are directed to have Mr. Gaines produced and appear at the SDNY before the Magistrate Judge as soon as possible. SO ORDERED.

Re: *United States v. Tony Gaines*, 17 Cr. 233 (PAC)



Dear Judge Crotty:

I write to inform the court of the status of Mr. Gaines' return to the Southern District of New York, and to respectfully request that the Court order the Government to produce Mr. Gaines in this district as soon as practical. In short, Mr. Gaines was arrested on September 17, 2020; as of this writing, six weeks later, he is languishing under very difficult conditions in a county jail in Oklahoma which has been cited for its deprivations and lax COVID-19 safeguards.

Tony Gaines was arrested in North Carolina on September 17, 2020 for allegedly violating the conditions of supervised release. He was presented there under **Federal Rule of Criminal Procedure 5(c)(3)**. Mr. Gaines did not challenge his continued detention, with the expectation that he would be brought to the Southern District of New York within a reasonable period of time. Cf. **18 U.S.C. § 3161(h)(F)** (in the Speedy Trial context, indicating that a delay of more than 10 days in transporting a defendant from one district to another was unreasonable).

Instead, Mr. Gaines was left in a county jail in North Carolina for around three weeks, and was then transported to *Oklahoma*, where he remains to this day. Mr. Gaines is not being held in a BOP facility, but is instead at the Grady County Jail, where the conditions are horrendous, and COVID-19 is prevalent. See The Marshall Project, '*Con Air*' is Spreading COVID-19 All Over the Federal Prison System (August 13, 2020) (describing the horrific conditions at Grady: "Grady prisoners have described having no hot water, no access to the outdoors or sunlight for weeks, and no way to distance from one another in packed dorms. At least one Grady prisoner has died from COVID-19.").¹

It has now been 43 days since Mr. Gaines' arrest. We recognize that the COVID-19 pandemic puts strains on every aspect of the federal criminal justice system. It does not mean, however, that a person should be kept in dangerous conditions, with limited access to counsel, in perpetual limbo, for weeks on end. I respectfully request that the Court direct the Government to

¹ Available at: <https://www.themarshallproject.org/2020/08/13/con-air-is-spreading-covid-19-all-over-the-federal-prison-system>.

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bring Mr. Gaines to this district as soon as practical, and to explain the reason for any further delay.

Respectfully submitted,

/s/ _____
Martin S. Cohen
Ass't Federal Defender
(212) 417-8737

cc: Justin Rodriguez, Esq., by ECF
Mr. Tony Gaines, Grady County Jail, by mail